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to Decedent Caleb Slay

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

1 TINA RICHARDSON, individually and as
2 successor-in-interest to Decedent Caleb Slay,
3 Plaintiff,

4 vs.

5 UNITED STATES OF AMERICA;
6 ANTHONY GASPERONI, individually and
7 in his official capacity as an agent for the
8 United States Drug Enforcement
9 Administration; JOHN STUART,
10 individually and in his official capacity as an
11 agent for the United States Drug
12 Enforcement Administration; DOES 1-20,
13 inclusive, individually and in their official
14 capacity as agents for the United States Drug
15 Enforcement Administration; CITY OF
16 SPRINGFIELD, a municipal entity; C.
17 NUCCIO, individually and in his official
18 capacity as sergeant for the Springfield
19 Police Department; and DOES 21-40,
20 inclusive, individually and in their official
21 capacity as police officers for the Springfield
22 Police Department,

23 Defendants.

CASE NO.: 6:23-cv-03337-RK

(Honorable District Judge Roseann A.
Ketchmark)

**PLAINTIFF'S SUGGESTIONS IN
OPPOSITION TO DEFENDANT UNITED
STATES MOTION TO SUBSTITUTE
UNITED STATES AS PARTY-DEFENDANT**

Complaint Filed: October 31, 2023

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

21 Plaintiff, Tina Richardson (hereinafter "Plaintiff"), by and through her counsel of record,
22 hereby submits the following Suggestions to the Court in Opposition to Defendant United States'
23 Motion to Substitute the United States as Party-Named Defendant on Plaintiff's State Law Claims
24 for Negligent Wrongful Death, Assault and Battery, Intentional Infliction of Emotional Distress,
25 and Negligence. These Suggestions in Opposition shall be based upon the Federal Rules of Civil
26 Procedure, West District of Missouri Local Rules, and the Orders of this Court. These Suggestions
27 in Opposition are further based upon the attached Memorandum of Points and Authorities; upon
28

1 the records and files in this action; and upon such further evidence and argument as may be
2 presented prior to or at the time of hearing the motion.
3

4 Dated: March 13, 2024

BURRIS NISENBAUM CURRY & LACY

5
6 /s/ Julia N. Quesada

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10 Attorneys for Plaintiff,

11 Tina Richardson
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This civil rights action against the United States of America, DEA Agent Anthony
4 Gasperoni, DEA Agent John Stuart, and DOES 1 through 20 (hereinafter collectively “U.S.
5 Defendants”), and the City of Springfield, Sergeant C. Nuccio, and DOES 21 through 40
6 (hereinafter collectively “City Defendants”), was brought pursuant to violations of Title 42 U.S.C.
7 §§ 1983, and 1988; the Fourth and Fourteenth Amendments to the United States Constitution; Title
8 28 U.S.C. § 2671, Federal Torts Claims Act; *Bivens v. Six Unknown Named Agents*, 403 U.S. 388
9 (1971); Wrongful Death under Missouri Revised Statute § 537.080; and under the common law of
10 Missouri. The claims arise from the egregious shooting and killing of Decedent Caleb Slay by
11 DEA Agent Anthony Gasperoni, as well as the actions and omissions by DEA Agent John Stuart,
12 and Springfield Police Sergeant C. Nuccio, on November 2, 2020. Decedent Caleb is survived by
13 his mother, Tina Richardson.
14

15 It is undisputed that all parties to this action have been properly served with summons.
16 However, Defendant United States now moves to substitute and designate the United States as
17 party-defendant in the stead of Defendants Gasperoni and Stuart, in both their individual and
18 official capacities, on Plaintiff’s state law causes of action, pursuant to 28 U.S.C. section
19 2679(d)(1). (Dkt. No. 28.) The causes of action which the United States seeks to be substituted in
20 as party-defendant are Plaintiff’s Sixth Cause of Action for Negligent Wrongful Death, Seventh
21 Cause of Action for Assault and Battery, Eighth Cause of Action for Intentional Infliction of
22 Emotional Distress, and Ninth Cause of Action for Negligence. (Id.) (See also Dkt. No. 1.) The
23 United States contends that the Certification made by the First Assistant United States Attorney
24 for the Western District of Missouri, Jeffrey P. Ray, (Dkt. No. 28-1), is sufficient to establish the
25 scope of employment which DEA Agent Defendants Gasperoni and Stuart were working at the
26 time of the incident.
27
28

1 Plaintiff submits that the related state common law intentional torts, and statutory
2 violations for negligence and wrongful death pursuant to Missouri Revised Statute section
3 537.080, are properly plead against Defendants Gasperoni and Stuart because whether the acts and
4 omissions of Defendants Gasperoni and Stuart were committed within the scope of their
5 employment as federal DEA agents is a disputed question of material fact and the Certification
6 made thereto is subject to judicial review. As such, this Court should deny the United States'
7 Motion to Substitute as Party-Defendant for Plaintiff's state law causes of action against
8 Defendants Gasperoni and Stuart.

9 10 **STATEMENT OF FACTS**

11 The facts giving rise to this action are set forth in Plaintiff's Complaint filed with this Court
12 on October 31, 2023. (See generally Dkt. No. 1) (See also Declaration of Julia N. Quesada
13 (hereinafter "Quesada Decl."), ¶ 2). In the late afternoon on November 2, 2020, Decedent Caleb
14 Slay (hereinafter "Decedent Caleb") was parked out front of his home in Springfield, Missouri,
15 when two unmarked DEA vehicles pulled up and parked in front of his house. *Id.* The two DEA
16 Agents, Anthony Gasperoni and John Stuart, were surveilling the area. *Id.*

17 As Decedent Caleb began walking up his driveway to the front door of his house,
18 Defendant Gasperoni ordered Decedent Caleb to stop, and Decedent Caleb complied. (Quesada
19 Decl. ¶ 3). Decedent Caleb informed Defendant Gasperoni of his legal firearm, then slowly
20 extended both hands out in front of his body showing Defendant Gasperoni that he was not holding
21 any weapon and did not pose any threat. *Id.*

22 During this interaction, Defendant Gasperoni took hold of Decedent Caleb's wrists while
23 Defendant Stuart approached from behind without any warning. (Quesada Decl. ¶ 4). Defendant
24 Stuart grabbed Caleb and one of the Defendant Agents, and Decedent Caleb, fell to the ground. *Id.*
25 While the Defendant Agent and Decedent Caleb were on the ground, Defendant Gasperoni
26 deployed his taser against Decedent Caleb's neck. *Id.* Defendant Gasperoni then took out his
27 firearm and without warning fired at least three bullets at Decedent Caleb, striking Decedent Caleb
28 in the head twice. *Id.*

1 Springfield Police Officers were dispatched to the scene after reports of shots fired.
2 (Quesada Decl. ¶ 5). Springfield Police Department Sergeant, C. Nuccio (hereinafter “Defendant
3 Nuccio”) was one of the first officers on scene after the shooting. *Id.*

4 Defendant Nuccio approached Decedent Caleb who was visibly bleeding from the head
5 and severely injured. (Quesada Decl. ¶ 6). Defendant Nuccio made the determination that
6 Decedent Caleb did not have a pulse and did not require immediate medical attention. *Id.*
7 Consequently, Defendant Nuccio prevented emergency medical responders from immediately
8 rendering aid and life saving measures to Decedent Caleb. *Id.* Emergency medical personnel were
9 permitted to tend to Decedent Caleb several minutes later and, contrary to Defendant Nuccio’s
10 initial determination, a low pulse was found. *Id.* Decedent Caleb succumbed to injuries and died
11 in his front yard. *Id.*

12
13 Defendant Gasperoni works in conjunction with the Springfield Police Department
14 (“SPD”) and has an assigned credential number (# 503951) and badge number. (Quesada Decl. ¶
15 7, Ex. A at 3). At the time of this encounter, Defendants Gasperoni and Stuart were assisting a
16 local law enforcement task force. (Quesada Decl. ¶ 7, Ex. A at 3) (Quesada Decl. ¶ 8, Ex. B at 3).
17 Defendants Gasperoni’s and Stuart’s involvement were initiated by City of Springfield Task Force
18 Officer, Nick Mittag (“TFO Mittag”). *Id.* TFO Mittag contacted Defendants Gasperoni and Stuart
19 for assistance with mobile surveillance. *Id.* Defendants Gasperoni and Stuart were surveilling a
20 red car in a Wal-Mart parking lot for several minutes before they followed the car to a residential
21 street where Decedent Caleb lived. (Quesada Decl. ¶ 7, Ex. A) (Quesada Decl. ¶ 8, Ex. B). When
22 Defendants Gasperoni and Stuart made contact with the drivers of the subject cars, Defendant
23 Stuart announced “police” as he approached and was wearing a vest that said “police” on it.
24 (Quesada Decl. ¶ 8, Ex. B at 10-12). Defendants Gasperoni and Stuart were wearing plain clothes
25 at the time of the incident, they were assisting SPD Task Force doing local law enforcement
26 functions. *Id.*

1 Thus, there are questions of fact as to whether Defendants Gasperoni and Stuart were
2 acting within their scope and employment with the DEA. As such, United States' Motion to
3 Substitute as Party-Defendant for Defendants Gasperoni and Stuart as to Plaintiff's state law
4 causes of action should be denied.

5 ARGUMENT

6 "The remedy against the United States ... for injury ... from the negligent or wrongful act
7 of any employee of the Government while acting within the scope of his office or employment is
8 exclusive...." 28 U.S.C. § 2679(d)(1). The immunity is triggered when the Attorney General or his
9 designate certifies that federal employees have been sued for conduct within the scope of their
10 employment. *Brown v. Armstrong*, 949 F.2d 1007, 1010 (8th Cir. 1991). "Upon certification ... the
11 United States shall be substituted as the party defendant." 28 U.S.C. § 2679(d)(1). "When the
12 government moves for substitution, the Attorney General's certification, although subject to
13 judicial review, is prima facie evidence that the employee's challenged conduct was within the
14 scope of employ. Therefore, the burden of altering that status quo is on the plaintiff, who must
15 come forward with specific facts rebutting the government's scope-of-employment certification."
16 *Brown v. Armstrong*, 949 F.2d 1007, 1010 (8th Cir. 1991) (internal quotations omitted). "To rebut
17 the certification and obtain discovery, a plaintiff must alleg[e] sufficient facts that, taken as true,
18 would establish that the defendant[s] actions exceeded the scope of [his] employment... If a
19 plaintiff meets this pleading burden, he may, if necessary, attain limited discovery to resolve any
20 factual disputes over jurisdiction." *Taylor v. Clark*, 821 F.Supp.2d 370, 373 (D.D.C. 2011)
21 (internal quotations omitted), citing, *Wuterich v. Murtha*, 562 F.3d 375, 380 (D.C.Cir.2009); see
22 also *Osborn v. Haley*, 549 U.S. 225, 229 (2007).

24 Here, Plaintiff maintains that there is a genuine dispute of material facts as to whether
25 Defendants Gasperoni and Stuart were acting within the scope of their employment with the DEA.
26 Specifically, Defendants Gasperoni and Stuart were both called by a Springfield Task Force
27 Officer, TFO Mittag. Defendants Gasperoni and Stuart were surveilling a red car as part of the
28

1 mobile surveillance initiated by the local task force. Neither Defendant Gasperoni, nor Defendant
2 Stuart encountered Decedent Caleb while out on assignment for the DEA, they were assisting local
3 law enforcement. Moreover, Defendant Gasperoni, although a DEA agent, works for the
4 Springfield Police Department and operates under an assigned SPD credential number and badge
5 number. Similarly, Defendant Stuart was wearing a body vest that was marked as “police” and
6 further announced himself as “police” during the encounter. There remain questions of fact as to
7 whether the acts and omissions of Defendants Gasperoni and Stuart were acting within their scope
8 of employment with the DEA at the time they encountered Decedent Caleb and exercised lethal
9 force. Therefore, the United States should not be substituted as Party-Defendant for Plaintiff’s
10 state law claims against Defendants Gasperoni and Stuart.
11

12 **CONCLUSION**

13 Based on the foregoing, Plaintiff respectfully requests that this Court deny the United
14 States’ Motion to Substitute as Party-Defendant in the stead of Defendants Gasperoni and Stuart
15 as to Plaintiff’s state law claims.

16 Respectfully submitted,

17 Dated: March 13, 2024

18 **BURRIS NISENBAUM CURRY & LACY**

19 By: /s/ Julia N. Quesada

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